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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,556

04/27/2006

Thomas Nissl

NISSL

2770

20151 7590 10/24/2008

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EXAMINER

DOWE, KATHERINE MARIE

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

10/24/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,556	<b>Applicant(s)</b> NISSL, THOMAS	
	<b>Examiner</b> KATHERINE M. DOWE	<b>Art Unit</b> 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,4 and 6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,4 and 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/14/2008 has been entered.
2. Claims 2, 4, and 6 are currently pending.

### ***Response to Arguments***

3. Applicant's arguments, see amendment, filed 8/14/2008, with respect to the rejection(s) of claim(s) 2, 4, and 6 under Herklotz et al. (EP 0970664 A2) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Majercak (US 2004/0002750).

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 2, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Majercak (US 2004/0002750) in view of White et al. (US 2003/0105517). Majercak

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discloses the invention substantially as claimed including a stent comprising a tubular support frame defining a longitudinal axis and expandable from an initial state to a support state (Figure 3). The support frame includes a plurality of ring segments arranged in succession in a direction of the longitudinal axis formed by struts (31), with U-shaped arcuate sections (36) joining the struts to thereby form a wave-like configuration in a circumferential direction of the support frame. The ring segments define wave crests and valleys, which confront one another. Adjacent ring segments are linked by first (38B) and second (38A) connectors, which alternate in a same circumferential plane and repeatedly alternate in the direction of the longitudinal axis. Each connector is formed with a U-shaped compensating section pointing in a same circumferential direction. The first connector (38B) has a length, in a direction of the longitudinal axis, greater than a length of the second connector (38A). The first connectors have arcuate legs disposed on both sides of the compensating sections, wherein each of the arcuate legs is disposed in a same circumferential plane adjacent to a corresponding one of the struts and curved in the same circumferential plane as the adjacent strut. The connectors are linked to the arcuate sections by connections, wherein the connections of the first connectors and the connections of the second connectors confront one another.

However, Majercak does not disclose the struts assume a generally linear configuration in the support state after being curved in an initial state. White et al. disclose it is desirable to have a strut (48) curved in a compressed, or initial, state (Fig 3) and assume a generally linear configuration in an expanded, or support, state (Fig 4).

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White et al. teaches that such a configuration helps maintain the length of the stent between the initial and support states (§0041-0042). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Majercak such that the struts maintained a curved design in the initial state to maintain a minimum profile and assume a generally linear configuration in an expanded support state to keep the length of the stent constant as the stent expands, thus reducing harm to the vessel that may be caused by the stent rubbing against the vessel wall if it shortens upon expansion.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHERINE M. DOWE whose telephone number is (571)272-3201. The examiner can normally be reached on M-F 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/  
Primary Examiner, Art Unit 3734

Katherine Dowe  
October 20, 2008

/K. M. D./  
Examiner, Art Unit 3734